

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF APPLICATION)

NUMBER 55-6237 (A52082))

MEMORANDUM DECISION

Application Number 55-6237 (A52082), in the name of Heber Light and Power Company, was filed on September 8, 1978, to appropriate 170.0 cfs of water from Lake Creek by way of Jones Reservoir at a point located North 1172 feet and East 179 feet from the SW Corner of Section 10, T4S, R6E, SLB&M; from Witts Lake Reservoir at a point located North 1167 feet and East 910 feet from the S $\frac{1}{4}$ Corner of Section 10, T4S, R6E, SLB&M; and from Deer Valley Reservoir at a point located South 2842 feet and East 261 feet from the N $\frac{1}{4}$ Corner of Section 15, T4S, R6E, SLB&M. Water will be stored in these reservoirs and then will be used for hydropower generation at the Lake Creek Power Plant. The water will be returned to Lake Creek at a point in the NW $\frac{1}{4}$ of Section 7, T4S, R6E, SLB&M

The application was advertised in The Wasatch Wave from August 30, 1979, to September 13, 1979, and was protested by Kennecott Copper Corporation, Donald J. Goodfellow, Robert R. Short Family Trust, Elvin W. Atkinson, and Provo River Water User's Association. A late protest was filed by Mike Loriz. The following summarizes the written protests. This new appropriation would take water from the natural channel at Witts Reservoir and release it four miles downstream which would dry up the stream bed and cause impairment to both surface and groundwater rights in the area. There is no unappropriated water in the source. The natural beauty of the area would be lost. Storage of water in the reservoirs would be a detriment to prior right holders downstream.

A hearing was held on October 18, 1979, in Heber City, Utah. At the hearing legal council for the applicant explained the proposal and how the application would not adversely affect the water rights of senior appropriators. The protestants reiterated their protests.

The application was reheard on March 27, 1985, at Heber City, Utah. At the hearing legal council for the applicant explained that operation of the power plant had demonstrated that the procedure is nonconsumptive because it uses the flows for the irrigation company. However, when converting the dam to the new outlet facility, Witts Lake dam was raised 3 $\frac{1}{2}$ feet and the capacity of the lake increased. The protestants reiterated their protests and objected to the increased storage in Witts Lake as a new appropriation impairing the rights of prior appropriators downstream.

The State Engineer has reviewed the application, the protests, the plans for the enlargement of Witts Lake Reservoir, the hydrology of the area, Lake Creek stream information, and other data available for the area and has noted the following: Regarding the storage water, the area-capacity curve for the rebuilding of the dam shows an increased storage of an additional 210 acre-feet for a total of 1226 acre-feet of water. During the past few years the State Engineer has developed an interim Utah Lake Management Plan by which upstream storage can be accomplished. It provides means by which prior water rights downstream (particularly in Utah Lake) can have upstream storage released and delivered to them. Witts Lake Reservoir storage water now will be included in the management

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plan, and the 210 acre-feet of water will be allowed to be stored with a priority of September 8, 1978, and subject to the prior rights downstream and all storage criteria as provided for under the Utah Lake Management Plan. Since the storage in Jones and Deer Valley Reservoirs is connected to Witt Lake, they too will be subject to the plan's provisions. Also since this water right is to be nonconsumptive, the water stored as the top 210 acre-feet is not to be available to the Lake Creek Irrigation Company for irrigation purposes.

Concerning the stream, it appears that Lake Creek is a gaining stream. Additional inflow enters the channel below the dam. The Utah Division of Wildlife Resources has conducted a study on Lake Creek due to the Cutthroat Trout fishery in the stream and has concluded that a minimum flow of 3.0 cfs at Clyde's Crossing is necessary to maintain the fishery.

It appears that if certain conditions are imposed, the application can be approved without impairment to prior rights.

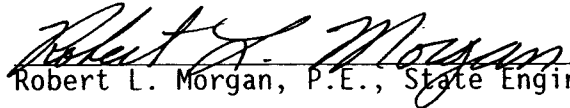
It is, therefore, **ORDERED** and Application Number 55-6237 (A52082) is hereby **APPROVED** subject to prior rights and the following conditions:

1. All storage in Witts Lake Reservoir, Jones Reservoir, and Deer Valley Reservoir shall be subject to the provisions of the Utah Lake Management Plan.
2. The applicant shall install a measuring device at or near Clyde's Crossing to measure all water in Lake Creek. The applicant shall collect the flow data for the site and submit the flow of Lake Creek at Clyde's Crossing to the State Engineer annually.
3. The flow of water at Clyde's Crossing shall be maintained at or above 3.0 cfs. Should the flow drop below 3.0 cfs at Clyde's Crossing the applicant shall release water at Witts Lake Reservoir to increase the flow at Clyde's Crossing to 3.0 cfs.
4. The water stored in the top 210 acre-feet of the reservoir shall not be available for use by the irrigation company and must be bypassed and allowed to flow downstream. Prior to any releases of said water, contact must be made with the Provo River Commissioner in order to coordinate with the Utah Lake Management Plan.
5. The applicant will be made a part of the Provo River Distribution System due to the services required by that system's commissioner. An account will be opened and an assessment made to cover administrative expenses. The applicant shall pay any and all reasonable costs assessed to administer this right.

This Decision is subject to the provisions of Section 73-3-14, Utah Code Annotated, 1953, which provides for plenary review by the filing of a civil action in the appropriate district court within sixty days from the date hereof.

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Dated this 17th day of June, 1994.


Robert L. Morgan, P.E., State Engineer

RLM:JER:mw

Mailed a copy of the foregoing Memorandum Decision this 17th day of June, 1994,
to:

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Lee Sim, Assistant State Engineer
for Adjudication

BY: 
MacClovia White, Secretary